IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

CRL.A.No. 234 of 2007()
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SC.262/2006 of ADDL.SESSIONS COURT (ADHOC)-II, KOTTAYAM
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APPELLANT:
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AZHAKAN THANKAPPAN,
C.NO.1364, CENTRAL PRISON,
TRIVANDRUM.

BY ADV. BABU.P.C(STATE BRIEF)

RESPONDENT:
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STATE OF KERALA REP. BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. PUBLIC PROSECUTOR SRI.C.M. COMMAPPU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K. THANKAPPAN, J.**

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**CRL.A.NO.234 OF 2007**

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**Dated this the 12th day of July, 2007.**

**JUDGMENT**

**T**he sole accused in S.C.No.262/2006 on the file of the Additonal Sessions Judge Fast Track (Adhoc-II), Kottayam, faced trial for the offences punishable under Sections 308 and 302 of the I.P.C and he was convicted and sentenced to undergo R.I for seven years. That judgment is challenged in this appeal. Since the appeal is filed through the jail authorities and the appellant is not having any counsel of his own choice, a member from the State brief panel has been appointed to argue the matter for and on behalf of the appellant. This Court heard the learned counsel appearing for the appellant and the learned Public Prosecutor appearing for the State.

2. The prosecution case against the appellant is that on 31.3.2006 at about 5.30 p.m a quarrel ensured between the appellant and PW1 regarding return of an amount of Rs.200/= which was owed to PW1 by the appellant and the appellant inflicted an injury on PW1 at the public road near Kaduthuruthy market. The prosecution examined eight witnesses and relied on Exts. P1 to P8.

MO1 knife was also produced. No evidence was adduced for and on behalf of the appellant and when he was questioned under Section 313 of the Code of Criminal procedure, he denied the prosecution case. The trial court believed the evidence of Pws 1 to 3 out of whom Pws 2 and 3 are the occurrence witnesses and Pw1 is the injured. PW1 had stated before the court that on the day of the incident at about 5.30 p.m when he went to the Kaduthuruthy market where the appellant was engaged in vending fish the appellant asked him to pay back Rs.200/= which he had received from the appellant. This witness has further stated that he had told the appellant that he is not having the amount and he would return the same after two days and saying this he went to the road. By that time, the appellant by uttering that "only on payment of my amount you will be allowed to go" and he took out MO1 knife and aimed stab at the chest of PW1. But as PW1 warded off it and the stab fell on the left lumbar region of PW1 causing a deep injury. Immediately the appellant left the place. This witness has further stated that he was taken to Muttachira Holy Ghost Hospital by PW2 and others, who were present at the place. This witness has further stated that he had got first aid from that hospital and he was referred to the Medical College. This witness

has further stated that he was admitted in the Medical College for five days. The prosecution examined Pws 2 and 3 to support the evidence of Pw1 and to prove the prosecution case. PW2 is one of the persons who present at the scene of occurrence and took PW1 to the hospital. This witness has stated that he was also engaged in vending fish and when PW1 came to the market, the appellant asked him to pay off the amount which he owed to the appellant. This witness has further stated that PW1 had told the appellant that the amount would be paid within two days and he went to the road. Immediately, the appellant followed him and asked him to give the amount and inflicted a stab injury on the front left chest of PW1 and as PW1 warded off the same, the stab fell on the left lumbar region and caused an injury. PW2 took PW1 to the Muttachira Holly Ghost Hospital from where he was referred to the Medical College. The evidence of PW2 is also supported by PW3. There are certain contradictions in the evidence of Pws 2 and 3 with regard to the exact stabbing of the appellant as they had only seen that the appellant going away from the scene and they did not see the appellant stabbing or inflicting injury on PW1. However, the trial court believed their evidence also to the extent that they were present at the scene and they had seen the appellant going away from the

scene with a knife. The trial court relied on the evidence of PW4 - the doctor, who had examined PW1 at the Muttachira Holly Ghost Hospital and had given Ext.P2 wound certificate. PW4 had stated before the court that he had examined PW1 and had issued P2 wound certificate. The doctor had stated in Ext.P2 that he had noted 7x 4 cms deep incised wound on the left lumbar region of PW1. This witness has further stated that the injury noted by him was a dangerous one. He had further stated that Mo1 can cause the injury noted in Ext.P2. But this witness has stated in Ext.P2 wound certificate that the injury was caused by

Thus it is not clear from his evidence that he had examined PW1 properly and recorded Ext.P2 properly and he cannot say that he had treated PW1 as his name as Baby.

3. Hence, the evidence of PW4 is doubtful regarding the nature of the injury sustained by PW1. Though this witness has stated that the injury sustained by PW1 is a dangerous injury, this Court is not in a position to hold that from the evidence it could be concluded that the

the appellant had stabbed PW1 with the knowledge that the injury may cause death or even knowledge that he has inflicted injury in a vital part of the body of PW1. Apart from the doubt regarding evidence of PW4, it was come out in evidence that PW1 was treated in the Medical College Hospital for five days and there was no medical evidence adduced by the prosecution regarding the treatment which he had in the medical college. Hence, the evidence accepted by the trial court regarding the injury noted in Ext.P2 is not sufficient to hold that the appellant had caused injury so as to attract an offence under Section 308 of the I.P.C. In this context, the evidence of PW8 - the Sub Inspector, who recovered Mo1 on the basis of the statement given by the appellant, is relevant. According to him, MO1 was recovered as per Ext.P7 seizure mahazar on the statement given by the appellant when he was arrested and questioned. MO1 produced before the court was also identified by the witnesses as used by the appellant. The witnesses who attested Ext.P7 seizure mahazar also support the evidence of PW8 with regard to the recovery of MO1. If the evidence of PW8 and the mahazar witnesses is believed, it can only be concluded that MO1 was the knife which the appellant used for inflicting injury on PW1. If so, the appellant had inflicted the injury with MO1 knife and it can be safely

concluded that the appellant had committed an offence punishable under Section 324 of the I.P.C. In this context, a further question remain is that in the evidence of PW3 he had stated that so many persons assembled at the scene and that persons directed PW1 to go to the house. That evidence shows that there was a wordy altercation between the appellant and PW1 before inflicting injury on PW1. If so, the finding of the trial court that the appellant had inflicted an injury with the knowledge that the injury would cause death or likely to cause death. In the absence of any medical evidence regarding the nature of the injury, the conviction entered against the appellant under Section 308 I.P.C is not sustainable and he is acquitted of that offence. Instead the appellant is found guilty under Section 324 of I.P.C and he was convicted thereunder and sentenced to undergo R.I for two years. The appellant is entitled for the benefit under Section 428 of the Cr.P.C.

With the above findings, the appeal is partly allowed.

**K. THANKAPPAN, JUDGE.**

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**K. THANKAPPAN, J.**

**CRL.A.NO.234 OF 2007**

**JUDGMENT**

**12th July, 2007.**